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30-3-1. Procedure -- Residence -- Grounds.

(1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.

(2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

(3) Grounds for divorce:

- (a) impotency of the respondent at the time of marriage;
- (b) adultery committed by the respondent subsequent to marriage;
- (c) willful desertion of the petitioner by the respondent for more than one year;
- (d) willful neglect of the respondent to provide for the petitioner the common necessities of life;
- (e) habitual drunkenness of the respondent;
- (f) conviction of the respondent for a felony;
- (g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;
- (h) irreconcilable differences of the marriage;
- (i) incurable insanity; or
- (j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless:

- (i) the respondent has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and
- (ii) the court finds by the testimony of competent witnesses that the insanity of the respondent is incurable.

(b) The court shall appoint for the respondent a guardian ad litem who shall protect the interests of the respondent. A copy of the summons and complaint shall be served on the respondent in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the respondent resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the respondent and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The petitioner or respondent may, if the respondent resides in this state, upon notice, have the respondent brought into the court at trial, or have an examination of the respondent by two or more competent physicians, to determine the mental condition of the respondent. For this

purpose either party may have leave from the court to enter any asylum or institution where the respondent may be confined. The costs of the court in this action shall be apportioned by the court.

30-3-2. Right of husband to divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

30-3-3. Award of costs, attorney and witness fees -- Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, Divorce, Chapter 4, Separate Maintenance, or Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and in any action to establish an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

Amended by Chapter 3, 2008 General Session

30-3-4. Pleadings -- Decree -- Use of affidavit -- Private records.

(1) (a) The complaint shall be in writing and signed by the petitioner or petitioner's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause. If the decree is to be entered upon the default of the respondent, evidence to support the decree may be submitted upon the affidavit of the petitioner with the approval of the court.

(c) If the petitioner and the respondent have a child or children, a decree of divorce may not be granted until both parties have attended the mandatory course described in Section **30-3-11.3**, and have presented a certificate of course completion to the court. The court may waive

this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section **78A-5-107** and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) (a) A party to an action brought under this title or to an action under Title 78B, Chapter 12, Utah Child Support Act, Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act, Title 78B, Chapter 14, Uniform Interstate Family Support Act, Title 78B, Chapter 15, Utah Uniform Parentage Act, or to an action to modify or enforce a judgment in the action may file a motion to have the file other than the final judgment, order, or decree classified as private.

(b) If the court finds that there are substantial interests favoring restricting access that clearly outweigh the interests favoring access, the court may classify the file, or any part thereof other than the final order, judgment, or decree, as private. An order classifying part of the file as private does not apply to subsequent filings.

(c) The record is private until the judge determines it is possible to release the record without prejudice to the interests that justified the closure. Any interested person may petition the court to permit access to a record classified as private under this section. The petition shall be served on the parties to the closure order.

Amended by Chapter 3, 2008 General Session

30-3-4.5. Motion for temporary separation order.

(1) A petitioner may file an action for a temporary separation order without filing a petition for divorce by filing a petition for temporary separation and motion for temporary orders if:

- (a) the petitioner is lawfully married to the respondent; and
- (b) both parties are residents of the state for at least 90 days prior to the date of filing.

(2) The temporary orders are valid for one year from the date of the hearing, or until one of the following occurs:

- (a) a petition for divorce is filed and consolidated with the petition for temporary separation; or
- (b) the case is dismissed.

(3) If a petition for divorce is filed and consolidated with the petition for temporary separation, orders entered in the temporary separation shall continue in the consolidated case.

(4) Both parties shall attend the divorce orientation course described in Section **30-3-11.4** within 60 days of the filing of the petition, for petitioner, and within 45 days of being served, for respondent.

(5) Service shall be made upon respondent, together with a 20-day summons, in accordance with the rules of civil procedure.

(6) The fee for filing the petition for temporary separation orders shall be \$25. If either party

files a petition for divorce within one year from the date of filing the petition for temporary separation, the \$25 shall be credited towards the filing fee for the divorce.

Enacted by Chapter 301, 2007 General Session

30-3-5.1. Provision for income withholding in child support order.

Whenever a court enters an order for child support, it shall include in the order a provision for withholding income as a means of collecting child support as provided in Title 62A, Chapter 11, Recovery Services.

30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or parent-time may not be rendered until a report on that investigation, consistent with Section **62A-4a-412**, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section **78A-2-227**.

Amended by Chapter 3, 2008 General Session

30.3.7 When decree becomes absolute.

(1) The decree of divorce becomes absolute:

(a) on the date it is signed by the court and entered by the clerk in the register of actions if both the parties who have a child or children have completed attendance at the mandatory course for divorcing parents as provided in Section **30-3-11.3** except if the court waives the requirement, on its own motion or on the motion of one of the parties, upon determination that course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties;

(b) at the expiration of a period of time the court may specifically designate, unless an appeal or other proceedings for review are pending; or

(c) when the court, before the decree becomes absolute, for sufficient cause otherwise orders.

(2) The court, upon application or on its own motion for good cause shown, may waive, alter,

or extend a designated period of time before the decree becomes absolute, but not to exceed six months from the signing and entry of the decree.

30.3.8. Remarriage -- When unlawful.

Neither party to a divorce proceeding which dissolves their marriage by decree may marry any person other than the spouse from whom the divorce was granted until it becomes absolute. If an appeal is taken, the divorce is not absolute until after affirmance of the decree.

30-3-10. Custody of children in case of separation or divorce -- Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

- (i) the past conduct and demonstrated moral standards of each of the parties;
- (ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;
- (iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child; and
- (iv) those factors outlined in Section **30-3-10.2**.

(b) The court shall, in every case, consider joint custody but may award any form of custody which is determined to be in the best interest of the child.

(c) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(d) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

(e) If interviews with the children are conducted by the court pursuant to Subsection (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent

due to a disability, as defined in Section **57-21-2**, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the

child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(5) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

Amended by Chapter 3, 2008 General Session

30-3-10.1. Definitions -- Joint legal custody -- Joint physical custody.

As used in this chapter:

(1) "Joint legal custody":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

(2) "Joint physical custody":

(a) means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support;

(b) can mean equal or nearly equal periods of physical custody of and access to the child by each of the parents, as required to meet the best interest of the child;

(c) may require that a primary physical residence for the child be designated; and

(d) does not prohibit the court from specifying one parent as the primary caretaker and

one home as the primary residence of the child.

30-3-10.2. Joint custody order -- Factors for court determination -- Public assistance.

(1) The court may order joint legal custody or joint physical custody or both if one or both parents have filed a parenting plan in accordance with Section **30-3-10.8** and it determines that joint legal custody or joint physical custody or both is in the best interest of the child.

(2) In determining whether the best interest of a child will be served by ordering joint legal or physical custody, the court shall consider the following factors:

(a) whether the physical, psychological, and emotional needs and development of the child will benefit from joint legal or physical custody;

(b) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;

(c) whether each parent is capable of encouraging and accepting a positive relationship between the child and the other parent, including the sharing of love, affection, and contact between the child and the other parent;

(d) whether both parents participated in raising the child before the divorce;

(e) the geographical proximity of the homes of the parents;

(f) the preference of the child if the child is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal or physical custody;

(g) the maturity of the parents and their willingness and ability to protect the child from conflict that may arise between the parents;

(h) the past and present ability of the parents to cooperate with each other and make decisions jointly;

(i) any history of, or potential for, child abuse, spouse abuse, or kidnapping; and

(j) any other factors the court finds relevant.

(3) The determination of the best interest of the child shall be by a preponderance of the evidence.

(4) The court shall inform both parties that an order for joint physical custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act.

(5) The court may order that where possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

30-3-10.3. Terms of joint legal custody order.

(1) Unless the court orders otherwise, before a final order of joint legal custody is entered both parties shall attend the mandatory course for divorcing parents, as provided in Section **30-3-11.3**, and present a certificate of completion from the course to the court.

(2) An order of joint legal custody shall provide terms the court determines appropriate, which may include specifying:

(a) either the county of residence of the child, until altered by further order of the court, or the custodian who has the sole legal right to determine the residence of the child;

(b) that the parents shall exchange information concerning the health, education, and welfare of the child, and where possible, confer before making decisions concerning any of these areas;

(c) the rights and duties of each parent regarding the child's present and future physical care, support, and education;

(d) provisions to minimize disruption of the child's attendance at school and other activities, his daily routine, and his association with friends; and

(e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.

(3) The court shall, where possible, include in the order the terms of the parenting plan provided in accordance with Section **30-3-10.8**.

(4) Any parental rights not specifically addressed by the court order may be exercised by the parent having physical custody of the child the majority of the time.

(5) (a) The appointment of joint legal custodians does not impair or limit the authority of the court to order support of the child, including payments by one custodian to the other.

(b) An order of joint legal custody, in itself, is not grounds for modifying a support order.

(c) The agreement shall contain a dispute resolution procedure the parties agree to use before seeking enforcement or modification of the terms and conditions of the order of joint legal custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

30-3-10.4. Modification or termination of order.

(1) On the motion of one or both of the parents, or the joint legal custodians if they are not the parents, the court may, after a hearing, modify an order that established custody if:

(a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified; and

(b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child.

(2) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section **30-3-10.8**.

(3) The order of joint legal custody may be terminated by order of the court if one or both parents file a motion for termination and the court determines that the joint legal custody order is unworkable or inappropriate under existing circumstances. At the time of entry of an order terminating joint legal custody, the court shall enter an order of sole legal custody under Section **30-3-10**. All related issues, including parent-time and child support, shall also be determined and ordered by the court.

(4) If the court finds that an action under this section is filed or answered frivolously and in a

manner designed to harass the other party, the court shall assess attorney's fees as costs against the offending party.

30-3-10.5. Payments of support, maintenance, and alimony.

(1) All monthly payments of support, maintenance, or alimony provided for in the order or decree shall be due on the first day of each month for purposes of Section **78B-12-112**, child support services pursuant to Title 62A, Chapter 11, Part 3, Public Support of Child, income withholding services pursuant to Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and other income withholding procedures pursuant to Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

(2) For purposes of child support services and income withholding pursuant to Title 62A, Chapter 11, Part 3 and Part 4, child support is not considered past due until the first day of the following month.

(3) For purposes other than those specified in Subsections (1) and (2), support shall be payable 1/2 by the 5th day of each month and 1/2 by the 20th day of that month, unless the order or decree provides for a different time for payment.

Amended by Chapter 3, 2008 General Session

30-3-10.7. Parenting plan -- Definitions.

(1) "Domestic violence" means the same as in Section **77-36-1**.

(2) "Parenting plan" means a plan for parenting a child, including allocation of parenting functions, which is incorporated in any final decree or decree of modification including an action for dissolution of marriage, annulment, legal separation, or paternity.

(3) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child, such as feeding, clothing, physical care, grooming, supervision, health care, day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and family social and economic circumstances; and

(f) providing for the financial support of the child.

Amended by Chapter 287, 2006 General Session

30-3-10.8. Parenting plan -- Filing -- Modifications.

(1) In any proceeding under this chapter, including actions for paternity, any party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of their original petition or at the time of filing their answer or counterclaim.

(2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with the petition to modify, or the answer or counterclaim to the petition to modify.

(3) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default to adopt the plan if the other party fails to file a proposed parenting plan as required by this section.

(4) Either party may file and serve an amended proposed parenting plan according to the rules for amending pleadings.

(5) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(6) Both parents may submit a parenting plan which has been agreed upon. A verified statement, signed by both parents, shall be attached.

(7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.

30-3-10.9. Parenting plan -- Objectives -- Required provisions -- Dispute resolution.

- (1) The objectives of a parenting plan are to:
- (a) provide for the child's physical care;
 - (b) maintain the child's emotional stability;
 - (c) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications to the parenting plan;
 - (d) set forth the authority and responsibilities of each parent with respect to the child consistent with the definitions outlined in this chapter;
 - (e) minimize the child's exposure to harmful parental conflict;
 - (f) encourage the parents, where appropriate, to meet the responsibilities to their minor children through agreements in the parenting plan rather than relying on judicial intervention; and
 - (g) protect the best interests of the child.

(2) The parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child, and provisions addressing notice and parent-time responsibilities in the event of the relocation of either party. It may contain other provisions comparable to those in Sections **30-3-5** and **30-3-10.3** regarding the welfare of the child.

(3) A process for resolving disputes shall be provided unless precluded or limited by statute. A dispute resolution process may include:

- (a) counseling;
- (b) mediation or arbitration by a specified individual or agency; or
- (c) court action.

(4) In the dispute resolution process:

- (a) preference shall be given to the provisions in the parenting plan;
- (b) parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;
- (c) a written record shall be prepared of any agreement reached in counseling or mediation and provided to each party;
- (d) if arbitration becomes necessary, a written record shall be prepared and a copy of the arbitration award shall be provided to each party;
- (e) if the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court may award attorney's fees and financial sanctions to the prevailing parent;
- (f) the district court shall have the right of review from the dispute resolution process; and
- (g) the provisions of this Subsection (4) shall be set forth in any final decree or order.

(5) The parenting plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the children in these specified areas or in other areas into their plan, consistent with the criteria outlined in Subsection **30-3-10.7(2)** and Subsection (1). Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(6) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(7) When mutual decision-making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

(8) The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions.

(9) If a parent fails to comply with a provision of the parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision of the parenting plan or a child support order may result in a finding of contempt of court.

30-3-10.10. Parenting plan -- Domestic violence.

(1) In any proceeding regarding a parenting plan, the court shall consider evidence of domestic violence, if presented.

(2) If there is a protective order, civil stalking injunction, or the court finds that a parent has committed domestic violence, the court shall consider the impact of domestic violence in awarding parent-time, and make specific findings regarding the award of parent-time.

(3) If the court orders parent-time and a protective order or civil stalking injunction is still in place, it shall consider whether to order the parents to conduct parent-time pick-up and transfer through a third party. The parent who is the stated victim in the order or injunction may submit to the court, and the court shall consider, the name of a person considered suitable to act as the third party.

(4) If the court orders the parents to conduct parent-time through a third party, the parenting plan shall specify the time, day, place, manner, and the third party to be used to implement the exchange.

Enacted by Chapter 287, 2006 General Session

30-3-10.17. Social security number in court records.

The social security number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment shall be placed in the records relating to the matter.

30-3-11.1. Family Court Act -- Purpose.

It is the public policy of the state of Utah to strengthen the family life foundation of our society and reduce the social and economic costs to the state resulting from broken homes and to take reasonable measures to preserve marriages, particularly where minor children are involved. The purposes of this act are to protect the rights of children and to promote the public welfare by preserving and protecting family life and the institution of matrimony by providing the courts with further assistance for family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies.

30-3-11.2. Appointment of counsel for child.

If, in any action before any court of this state involving the custody or support of a child, it shall appear in the best interests of the child to have a separate exposition of the issues and personal representation for the child, the court may appoint counsel to represent the child throughout the action, and the attorney's fee for such representation may be taxed as a cost of

the action.

**30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -
- Exceptions.**

(1) There is established a mandatory course for divorcing parents as a pilot program in the third and fourth judicial districts to be administered by the Administrative Office of the Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be implemented in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section **30-3-4**. If that requirement is waived, the court may permit the divorce action to proceed.

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.

(5) The mandatory course shall instruct both parties about divorce and its impacts on:

(a) their child or children;

(b) their family relationship;

(c) their financial responsibilities for their child or children; and

(d) that domestic violence has a harmful effect on children and family relationships.

(6) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (8).

(7) A certificate of completion constitutes evidence to the court of course completion by the parties.

(8) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section **51-9-408**.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

(10) The Administrative Office of the Courts shall adopt a program to evaluate the

effectiveness of the mandatory educational course. Progress reports shall be provided annually to the Judiciary Interim Committee.

Amended by Chapter 382, 2008 General Session

30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Exceptions.

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children are not required, but may choose to attend the course. The purpose of the course shall be to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(4) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(5) The divorce orientation course shall be neutral, unbiased, at least one hour in duration, and include:

- (a) options available as alternatives to divorce;
- (b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;
- (c) resources available to improve or strengthen the marriage;
- (d) a discussion of the positive and negative consequences of divorce;
- (e) a discussion of the process of divorce;
- (f) options available for proceeding with a divorce, including:
 - (i) mediation;
 - (ii) collaborative law; and
 - (iii) litigation; and
- (g) a discussion of post-divorce resources.

(6) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section **30-3-11.3**.

(7) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6, Utah Procurement Code, through private or public contracts.

(8) Each participant shall pay the costs of the course, which may not exceed \$20, to the independent contractor providing the course at the time and place of the course.

(a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section **51-9-408**.

(b) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion. The provider shall be reimbursed for its costs by the Administrative Office of the Courts. A

petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be impecunious as provided in Subsection (8)(b).

(10) The Online Court Assistance Program shall include instructions with the forms for divorce which inform the petitioner of the requirement of this section.

(11) Both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court. A certificate of completion constitutes evidence to the court of course completion by the parties.

(12) It shall be an affirmative defense in all divorce actions that the divorce orientation requirement was not complied with, and the action may not continue until a party has complied.

(13) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided annually to the Judiciary Interim Committee.

Amended by Chapter 382, 2008 General Session

30-3-12. Courts to exercise family counseling powers.

Each district court of the respective judicial districts, while sitting in matters of divorce, annulment, separate maintenance, child custody, alimony and support in connection therewith, child custody in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this act.

30-3-13.1. Establishment of family court division of district court.

A family court division of the district court may be established with the consent of the county legislative body in a county in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts require use of the procedures provided for in this act in order to give full and proper consideration to such cases and to effectuate the purposes of this act. The determination shall be made annually by the judge of the district court in counties having only one judge, and by a majority of the judges of the district court in counties having more than one judge.

30-3-14.1. Designation of judges -- Terms.

In a county within a judicial district having more than one judge of the district court but having a population of less than 300,000 and in which the district court has established a family court

division, the presiding judge of such court shall annually, in the month of September, designate at least one judge to hear all cases under this act. In a county within a judicial district having more than one judge of the district court and having a population of more than 300,000 and in which the district court has established a family court division, the presiding judge of such court shall annually, in the month of September, designate at least two judges to hear all cases under this act, and shall designate one of such judges as the presiding judge of such family court division. Such judge or judges shall serve on the family court division not less than one year and devote their time primarily to divorce and other domestic relations cases.

30-3-15.1. Appointment of domestic relations counselors, family court commissioner, and assistants and clerks.

In each county having a population of less than 300,000 and in which the district court has established a family court division the district court judge or judges may, and in each county having a population of more than 300,000 and in which the district court has established a family court division the district court judges shall, by an order filed in the office of the clerk on or before July 1 of each year, appoint one or more domestic relations counselors, an attorney of recognized ability and standing at the bar as family court commissioner, and such other persons as assistants and clerks as may be necessary, to serve during the pleasure of the appointing power.

30-3-15.3. Commissioners -- Powers.

Commissioners shall:

- (1) secure compliance with court orders;
- (2) require attendance at the mandatory course as provided in Section **30-3-11.3**;
- (3) serve as judge pro tempore, master or referee on:
 - (a) assignment of the court; and
 - (b) with the written consent of the parties:
 - (i) orders to show cause where no contempt is alleged;
 - (ii) default divorces where the parties have had marriage counseling but there has been no reconciliation;
 - (iii) uncontested actions under Title 78B, Chapter 15, Utah Uniform Parentage Act;
 - (iv) actions under Title 78B, Chapter 12, Utah Child Support Act; and
 - (v) actions under Title 78B, Chapter 14, Uniform Interstate Family Support Act; and
- (4) represent the interest of children in divorce or annulment actions, and the parties in appropriate cases.

Amended by Chapter 3, 2008 General Session

30-3-15.4. Salaries and expenses.

Salaries of persons appointed under the foregoing sections shall be fixed by the county legislative body of the county in which they serve. Office space, furnishings, equipment, and supplies for family court commissioners and conciliation staff shall be provided by the county. The expenses and salaries of family court commissioners and conciliation staff shall be paid from county funds.

30-3-16.1. Jurisdiction of family court division -- Powers.

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is a child of the spouses or either of them under the age of 17 years whose welfare might be affected, the family court division of the district court shall have jurisdiction over the controversy, over the parties and over all persons having any relation to the controversy and may compel attendance before the court or a domestic relations counselor of the parties or other persons related to the controversy. The court may make orders in divorce or conciliation proceeding as it deems necessary for the protection of the family interests.

30-3-16.2. Petition for conciliation.

Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses may file a petition for conciliation in the family court division invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or an amicable settlement of the controversy between them so as to avoid litigation over the issues involved.

30-3-16.3. Contents of petition.

The petition for conciliation shall state:

(1) A controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(2) The name and age of each child under the age of 17 years whose welfare may be affected by the controversy.

(3) The name and address of the petitioner or the names and addresses of the petitioners.

(4) If the petition is filed by one spouse only, the name and address of the other spouse as a

respondent.

(5) The name, as a respondent, of any other person who has any relation to the controversy and, if known to the petitioners, the address of such person.

(6) Such other information as the court may by rule require.

30-3-16.4. Procedure upon filing of petition.

When a petition for conciliation is filed in the family court division of the district court, the court shall refer the matter to the domestic relations counselor or counselors and shall cause notice to be given to the spouses, by mail or in a form prescribed by the court, of the filing of the petition and of the time and place of any hearing, conference or other proceeding scheduled by the court or domestic relations counselors under this act.

30-3-16.5. Fees.

The court may fix fees to be charged for filing a petition for conciliation and for use of the courts' counseling services.

30-3-16.6. Information not available to public.

Neither the names of petitioners nor respondents, nor the contents of petitions for conciliation filed under this act, shall be available or open to public inquiry, except that an attorney for a person seeking to file an action for divorce, annulment or separate maintenance may determine from the clerk of the court if the other spouse has filed a petition for conciliation.

30-3-16.7. Effect of petition -- Pendency of action.

The filing of a petition for conciliation under this act shall, for a period of 60 days thereafter, act as a bar to the filing by either spouse of an action for divorce, annulment of marriage or separate maintenance unless the court otherwise orders. The pendency of an action for divorce, annulment of marriage or separate maintenance shall not prevent either party to the action from filing a petition for conciliation under this act, either on his own or at the request and direction of the court as authorized by Section **30-3-17**; and the filing of a petition for conciliation shall stay for a period of 60 days, unless the court otherwise orders, any trial or default hearing upon the complaint. However, when the judge of the family court division is advised in writing by a

marriage counselor to whom a petition for conciliation has been referred that a reconciliation of the parties cannot be effected, the bar to filing an action or the stay of trial or default hearing shall be removed.

30-3-17. Power and jurisdiction of judge.

The judge of a district court may counsel either spouse or both and may in his discretion require one or both of them to appear before him and, in those counties where a domestic relations counselor has been appointed pursuant to this act, require them to file a petition for conciliation and to appear before such counselor, or may recommend the aid of a physician, psychiatrist, psychologist, social service worker or other specialists or scientific expert, or the pastor, bishop or presiding officer of any religious denomination to which the parties may belong. The power and jurisdiction granted by this act shall be in addition to that presently exercised by the district courts and shall not be in limitation thereof.

30-3-17.1. Proceedings considered confidential -- Written evaluation by counselor.

The petition for conciliation and all communications, verbal or written, from the parties to the domestic relations counselors or other personnel of the conciliation department in counseling or conciliation proceedings shall be deemed to be made in official confidence within the meaning of Section **78B-1-137** and shall not be admissible or usable for any purpose in any divorce hearing or other proceeding. However, the marriage counselor may submit to the appropriate court a written evaluation of the prospects or prognosis of a particular marriage without divulging facts or revealing confidential disclosures.

Amended by Chapter 3, 2008 General Session

30-3-18. Waiting period for hearing after filing for divorce -- Exemption -- Use of counseling and education services not to be construed as condonation or promotion.

(1) Unless the court, for good cause shown and set forth in the findings, otherwise orders, no hearing for decree of divorce shall be held by the court until 90 days shall have elapsed from the filing of the complaint, provided the court may make such interim orders as may be just and equitable.

(2) The 90-day period as provided in Subsection (1) shall not apply in any case where both parties have completed the mandatory educational course for divorcing parents as provided in Section **30-3-11.3**.

(3) The use of counseling, mediation, and education services provided under this chapter

may not be construed as condoning the acts that may constitute grounds for divorce on the part of either spouse nor of promoting divorce.

30-3-32. Parent-time -- Intent -- Policy -- Definitions.

(1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.

(2) (a) A court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic or family violence.

(b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(i) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(iii) it is in the best interests of the child to have both parents actively involved in parenting the child.

(c) An order issued by a court pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act shall be considered evidence of real harm or substantiated potential harm to the child.

(3) For purposes of Sections **30-3-32** through **30-3-37**:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas or winter school break until the evening before the child returns to school.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections **30-3-35**(2)(f) and (2)(g), religious holidays as provided in Subsections **30-3-33**(3) and (17), and "Christmas school vacation."

(d) "Surrogate care" means care by any individual other than the parent of the child.

(e) "Uninterrupted time" means parent-time exercised by one parent without interruption at any time by the presence of the other parent.

(f) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section **30-3-37**.

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections **30-3-35** and **30-3-35.5**, the following advisory guidelines are suggested to govern all parent-time arrangements between parents.

(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.

(2) The parent-time schedule shall be utilized to maximize the continuity and stability of the child's life.

(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.

(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.

(5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.

(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.

(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.

(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections **30-3-35** and **30-3-35.5**.

(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.

(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.

(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.

(12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.

(13) Each parent shall provide the other with his current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.

(14) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the

equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

- (a) the best interests of the child;
- (b) each parent's ability to handle any additional expenses for virtual parent-time; and
- (c) any other factors the court considers material.

(15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.

(16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.

(17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

(18) If the child is on a different parent-time schedule than a sibling, based on Sections **30-3-35** and **30-3-35.5**, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.

Amended by Chapter 146, 2008 General Session

30-3-33. Best interests -- Rebuttable presumption.

(1) If the parties are unable to agree on a parent-time schedule, the court may establish a parent-time schedule consistent with the best interests of the child.

(2) The advisory guidelines as provided in Section **30-3-33** and the parent-time schedule as provided in Sections **30-3-35** and **30-3-35.5** shall be presumed to be in the best interests of the child. The parent-time schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria:

- (a) parent-time would endanger the child's physical health or significantly impair the child's emotional development;
- (b) the distance between the residency of the child and the noncustodial parent;
- (c) a substantiated or unfounded allegation of child abuse has been made;

- (d) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during parent-time;
 - (e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of parent-time;
 - (f) the preference of the child if the court determines the child to be of sufficient maturity;
 - (g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;
 - (h) shared interests between the child and the noncustodial parent;
 - (i) the involvement or lack of involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;
 - (j) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;
 - (k) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;
 - (l) the minimal duration of and lack of significant bonding in the parents' relationship prior to the conception of the child;
 - (m) the parent-time schedule of siblings;
 - (n) the lack of reasonable alternatives to the needs of a nursing child; and
 - (o) any other criteria the court determines relevant to the best interests of the child.
- (3) The court shall enter the reasons underlying its order for parent-time that:
- (a) incorporates a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**; or
 - (b) provides more or less parent-time than a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**.
- (4) Once the parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

Amended by Chapter 146, 2008 General Session

30-3-34. Minimum schedule for parent-time for children 5 to 18 years of age.

- (1) The parent-time schedule in this section applies to children 5 to 18 years of age.
- (2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.
 - (a) (i) (A) One weekday evening to be specified by the noncustodial parent or the court, or Wednesday evening if not specified, from 5:30 p.m. until 8:30 p.m.;
 - (B) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i); or
 - (C) at the election of the noncustodial parent, if school is not in session, one weekday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 8:30 p.m. if the noncustodial parent is available to be with the child, unless the court directs the application of Subsection (2)(a)(i)(A) or (2)(a)(i)(B).

(ii) Once the election of the weekday for the weekday evening parent-time is made, it may not be changed except by mutual written agreement or court order.

(b) (i) (A) Alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(B) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i)(A); or

(C) at the election of the noncustodial parent, if school is not in session, on Friday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 7 p.m. on Sunday, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(b)(i)(A) or (2)(b)(i)(B).

(ii) A step-parent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iii) Elections should be made by the noncustodial parent at the time of entry of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(iv) Weekends include any "snow" days, teacher development days, or other days when school is not scheduled and which are contiguous to the weekend period.

(c) Holidays include any "snow" days, teacher development days, or other days when school is not scheduled, contiguous to the holiday period, and take precedence over the weekend parent-time. Changes may not be made to the regular rotation of the alternating weekend parent-time schedule; however, birthdays take precedence over holidays and extended parent-time, except Mother's Day and Father's Day; birthdays do not take precedence over uninterrupted parent-time if the parent exercising uninterrupted time takes the child away from that parent's residence for the uninterrupted extended parent-time.

(d) If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day.

(e) (i) If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period.

(ii) (A) At the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend; or

(B) at the election of the noncustodial parent, if school is not in session, parent-time over a scheduled holiday weekend may begin at approximately 9 a.m., accommodating the custodial parent's work schedule, the first day of the holiday weekend until 7 p.m. on the last day of the holiday weekend, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(e)(ii)(A).

(iii) A step-parent, grandparent, or other responsible individual designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iv) Elections should be made by the noncustodial parent at the time of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(f) In years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) July 4 beginning 6 p.m. the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Labor Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vii) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(viii) the first portion of the Christmas school vacation as defined in Subsection **30-3-32(3)(b)** including Christmas Eve and Christmas Day until 1 p.m. on the day halfway through the holiday, if there are an odd number of days for the holiday period, or until 7 p.m. if there are an even number of days for the holiday period, so long as the entire holiday is equally divided.

(g) In years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) President's Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) Memorial Day beginning at 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iv) July 24 beginning at 6 p.m. on the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vi) Halloween on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and

(viii) the second portion of the Christmas school vacation as defined in Subsection **30-3-32(3)(b)**, beginning 1 p.m. on the day halfway through the holiday, if there are an odd number of days for the holiday period, or at 7 p.m. if there are an even number of days for the holiday period, so long as the entire Christmas holiday is equally divided.

(h) The custodial parent is entitled to the odd year holidays in even years and the even year holidays in odd years.

(i) Father's Day shall be spent with the natural or adoptive father every year beginning at 9

a.m. until 7 p.m. on the holiday.

(j) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday.

(k) Extended parent-time with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent, including weekends normally exercised by the noncustodial parent, but not holidays;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to parent-time for the custodial parent for weekday parent-time but not weekends, except for a holiday to be exercised by the other parent.

(l) The custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation.

(m) Both parents shall provide notification of extended parent-time or vacation weeks with the child at least 30 days in advance to the other parent and if notification is not provided timely the complying parent may determine the schedule for extended parent-time for the noncomplying parent.

(n) Telephone contact shall be at reasonable hours and for a reasonable duration.

(o) Virtual parent-time, if the equipment is reasonably available and the parents reside at least 100 miles apart, shall be at reasonable hours and for reasonable duration, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(i) the best interests of the child;

(ii) each parent's ability to handle any additional expenses for virtual parent-time; and

(iii) any other factors the court considers material.

(3) Any elections required to be made in accordance with this section by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order.

(4) Notwithstanding Subsection (2)(e)(i), the Halloween holiday may not be extended beyond the hours designated in Subsection (2)(g)(vi).

Amended by Chapter 146, 2008 General Session

30-3-35.5. Minimum schedule for parent-time for children under five years of age.

(1) The parent-time schedule in this section applies to children under five years old.

(2) All holidays in this section refer to the same holidays referenced in Section **30-3-35**.

(3) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.

(a) For children under five months of age:

(i) six hours of parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three parent-time periods; and

(B) in the custodial home, established child care setting, or other

environment familiar to the child; and

(ii) two hours on holidays and in the years specified in Subsections **30-3-35(2)(f)** through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child.

(b) For children five months of age or older, but younger than nine months of age:

(i) nine hours of parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child; and

(ii) two hours on the holidays and in the years specified in Subsections **30-3-35(2)(f)** through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child.

(c) For children nine months of age or older, but younger than 12 months of age:

(i) one eight hour visit per week to be specified by the noncustodial parent or court;

(ii) one three hour visit per week to be specified by the noncustodial parent or court;

(iii) eight hours on the holidays and in the years specified in Subsections **30-3-35(2)(f)** through (i); and

(iv) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(d) For children 12 months of age or older, but younger than 18 months of age:

(i) one eight-hour visit per alternating weekend to be specified by the noncustodial parent or court;

(ii) on opposite weekends from Subsection (2)(d)(i), from 6 p.m. on Friday until noon on Saturday;

(iii) one three-hour visit per week to be specified by the noncustodial parent or court;

(iv) eight hours on the holidays and in the years specified in Subsections **30-3-35(2)(f)** through (i); and

(v) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(e) For children 18 months of age or older, but younger than three years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(iii) parent-time on holidays as specified in Subsections **30-3-35**(2)(c) through (i);

(iv) extended parent-time may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(f) For children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(iii) parent-time on holidays as specified in Subsections **30-3-35**(2)(c) through (i);

(iv) extended parent-time with the noncustodial parent may be:

(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one two-week period shall be uninterrupted time for the noncustodial parent;

(C) the remaining two-week period shall be subject to parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether

the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(4) A parent shall notify the other parent at least 30 days in advance of extended parent-time or vacation weeks.

(5) Virtual parent-time shall be at reasonable hours and for reasonable duration.

Amended by Chapter 146, 2008 General Session

30-3-36. Special circumstances.

(1) When parent-time has not taken place for an extended period of time and the child lacks an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects upon the child and gradually reintroduce an appropriate parent-time plan for the noncustodial parent.

(2) For emergency purposes, whenever the child travels with either parent, all of the following will be provided to the other parent:

(a) an itinerary of travel dates;

(b) destinations;

(c) places where the child or traveling parent can be reached; and

(d) the name and telephone number of an available third person who would be knowledgeable of the child's location.

(3) Unchaperoned travel of a child under the age of five years is not recommended.

30-3-37. Relocation.

(1) For purposes of this section, "relocation" means moving from the state or 150 miles or more from the residence specified in the court's decree.

(2) The relocating parent shall provide, if possible, 60 days advance written notice of the intended relocation to the other parent. The written notice of relocation shall contain statements affirming the following:

(a) the parent-time provisions in Subsection (5) or a schedule approved by both parties will be followed; and

(b) neither parent will interfere with the other's parental rights pursuant to court ordered parent-time arrangements, or the schedule approved by both parties.

(3) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the notice of relocation and parent-time schedule as provided in Section **30-3-35** and make appropriate orders regarding the parent-time and costs for parent-time transportation.

(4) In determining the parent-time schedule and allocating the transportation costs, the court shall consider:

- (a) the reason for the parent's relocation;
- (b) the additional costs or difficulty to both parents in exercising parent-time;
- (c) the economic resources of both parents; and
- (d) other factors the court considers necessary and relevant.

(5) Unless otherwise ordered by the court, upon the relocation, as defined in Subsection (1), of one of the parties the following schedule shall be the minimum requirements for parent-time with a school-age child:

(a) in years ending in an odd number, the child shall spend the following holidays with the noncustodial parent:

- (i) Thanksgiving holiday beginning Wednesday until Sunday; and
- (ii) Spring break, if applicable, beginning the last day of school before the holiday

until the day before school resumes;

(b) in years ending in an even number, the child shall spend the following holidays with the noncustodial parent:

- (i) the entire winter school break period; and
- (ii) the Fall school break beginning the last day of school before the holiday until

the day before school resumes;

(c) extended parent-time equal to 1/2 of the summer or off-track time for consecutive weeks. The children should be returned to the custodial home no later than seven days before school begins; however, this week shall be counted when determining the amount of parent-time to be divided between the parents for the summer or off-track period; and

(d) at the option and expense of the noncustodial parent, one weekend per month.

(6) In the event finances and distance preclude the exercise of minimum parent-time for the noncustodial parent during the school year, the court should consider awarding more time for the noncustodial parent during the summer time if it is in the best interests of the children.

(7) Upon the motion of any party, the court may order uninterrupted parent-time with the noncustodial parent for a minimum of 30 days during extended parent-time, unless the court finds it is not in the best interests of the child. If the court orders uninterrupted parent-time during a period not covered by this section, it shall specify in its order which parent is responsible for the child's travel expenses.

(8) Unless otherwise ordered by the court the relocating party shall be responsible for all the child's travel expenses relating to Subsections (5)(a) and (b) and 1/2 of the child's travel expenses relating to Subsection (5)(c), provided the noncustodial parent is current on all support obligations. If the noncustodial parent has been found in contempt for not being current on all support obligations, the noncustodial parent shall be responsible for all of the child's travel expenses under Subsection (5), unless the court rules otherwise. Reimbursement by either responsible party to the other for the child's travel expenses shall be made within 30 days of receipt of documents detailing those expenses.

(9) The court may apply this provision to any preexisting decree of divorce.

(10) Any action under this section may be set for an expedited hearing.

(11) A parent who fails to comply with the notice of relocation in Subsection (2) shall be in contempt of the court's order.

Amended by Chapter 146, 2008 General Session

30-3-38. Expedited Parent-time Enforcement Program.

(1) There is established an Expedited Parent-time Enforcement Program in the third judicial district to be administered by the Administrative Office of the Courts.

(2) As used in this section:

(a) "Mediator" means a person who:

(i) is qualified to mediate parent-time disputes under criteria established by the Administrative Office of the Courts; and

(ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.

(b) "Services to facilitate parent-time" or "services" means services designed to assist families in resolving parent-time problems through:

(i) counseling;

(ii) supervised parent-time;

(iii) neutral drop-off and pick-up;

(iv) educational classes; and

(v) other related activities.

(3) (a) If a parent files a motion in the third district court alleging that court-ordered parent-time rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this program for assignment to a mediator, unless a parent is incarcerated or otherwise unavailable. Unless the court rules otherwise, a parent residing outside of the state is not unavailable. The director of the program for the courts, the court, or the mediator may excuse either party from the requirement to mediate for good cause.

(b) Upon receipt of a case, the mediator shall:

(i) meet with the parents to address parent-time issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on parent-time between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate parent-time if:

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

(d) At any time during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the program for referral to the judge or court commissioner to whom the case was assigned under Subsection (3)(a) if:

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation and:

(A) the parents have received services to facilitate parent-time;

(B) both parents object to receiving services to facilitate parent-time; or

(C) the parents are unlikely to benefit from receiving services to facilitate

parent-time.

(e) Upon receiving a case from the administrator of the program, a judge or court commissioner may:

- (i) review the agreement of the parents and, if acceptable, sign it as an order;
- (ii) order the parents to receive services to facilitate parent-time;
- (iii) proceed with the case; or
- (iv) take other appropriate action.

(4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child who is the subject of a parent-time order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:

- (i) the judge assigned to the case who may immediately issue orders and take other appropriate action to resolve the allegation and protect the child; and
- (ii) the Division of Child and Family Services within the Department of Human Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.

(b) If an allegation under Subsection (4)(a) is made against a parent with parent-time rights or a member of that parent's household, parent-time by that parent shall, pursuant to an order of the court, be supervised until:

- (i) the allegation has been resolved; or
- (ii) a court orders otherwise.

(c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate parent-time problems and a service provider may continue to provide services to facilitate parent-time unless otherwise ordered by a court.

(5) (a) The Department of Human Services may contract with one or more entities in accordance with Title 63G, Chapter 6, Utah Procurement Code, to provide:

- (i) services to facilitate parent-time;
- (ii) case management services; and
- (iii) administrative services.

(b) An entity who contracts with the Department of Human Services under Subsection (5)(a) shall:

- (i) be qualified to provide one or more of the services listed in Subsection (5)(a);

and

(ii) agree to follow billing guidelines established by the Department of Human Services and this section.

(6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

- (i) reduced to a sum certain;
- (ii) divided equally between the parents; and
- (iii) charged against each parent taking into account the ability of that parent to pay

under billing guidelines adopted in accordance with this section.

(b) A judge may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:

- (i) failed to participate in good faith in mediation or services to facilitate parent-time;
- or
- (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

(c) (i) The cost of mediation and services to facilitate parent-time may be charged to parents at periodic intervals.

(ii) Mediation and services to facilitate parent-time may only be terminated on the ground of nonpayment if both parents are delinquent.

(7) (a) The Judicial Council may make rules to implement and administer the provisions of this program related to mediation.

(b) The Department of Human Services may make rules to implement and administer the provisions of this program related to services to facilitate parent-time.

(8) (a) The Administrative Office of the Courts shall adopt outcome measures to evaluate the effectiveness of the mediation component of this program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee.

(b) The Department of Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (7)(a) and (b).

(9) The Department of Human Services shall, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures, apply for federal funds as available.

Amended by Chapter 44, 2008 General Session
Amended by Chapter 382, 2008 General Session

30-3-39. Mediation program.

(1) There is established a mandatory domestic mediation program to help reduce the time and tensions associated with obtaining a divorce.

(2) If, after the filing of an answer to a complaint of divorce, there are any remaining contested issues, the parties shall participate in good faith in at least one session of mediation. This requirement does not preclude the entry of pretrial orders before mediation takes place.

(3) The parties shall use a mediator qualified to mediate domestic disputes under criteria established by the Judicial Council in accordance with Section **78B-6-205**.

(4) Unless otherwise ordered by the court or the parties agree upon a different payment arrangement, the cost of mediation shall be divided equally between the parties.

(5) The director of dispute resolution programs for the courts, the court, or the mediator may excuse either party from the requirement to mediate for good cause.

(6) Mediation shall be conducted in accordance with the Utah Rules of Court-Annexed Alternative Dispute Resolution.

Amended by Chapter 3, 2008 General Session